IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. **No. 2590 of 2006**
Date of decision: 27.10.2006

State of Punjab etc.

..... Appellants.

Versus

Sunita Rani

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. G.C. Gupta, DAG, Punjab
for the appellants.

Mr. V.M. Gupta, Advocate
for respondent.

P.S. PATWALIA, J. (ORAL)

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Learned counsel for the respondent has relied upon a Division Bench judgment of this Court in C.W.P. No. 6049 of 1997 decided on 06.05.1998 in Tipar Chand Sharma & another v. State of Punjab and others wherein this Court has taken a view that merely if an employee does not avail promotion, his right to get proficiency step up increments cannot be marred. The relevant observations of the Division Bench are as hereunder:-

> "The question then emerges for consideration is that whether the non-availing of the promotion, as alleged by the respondents, can mar the right of the petitioners from getting the benefit of the Notification.
>
> It is not specifically mentioned in the circular letter that a person who does not avail the promotional opportunity shall not be entitled to the benefit of proficiency step-up. The relevant sub para of the circular letter is reproduced as below:-

> "(7) For reckoning the period of 8 and 18 years, the entire service in the time scale, senior scale and selection grade (of mere placement and not involving the fixation of pay at higher level) etc., wherever available in a cadre, shall be counted. If an employee joins a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step-up (s) would stand postponed by a number of years equal to the numbers of increments already covered by him from the minimum of the scale at the time of initial fixation of pay in the scale. That the step-up is related to the number of years of service in a particular scale and if an employee's pay is fixed by process of promotion at the sixth stage of a scale, he will be entitled to earn a step-up in that scale only after 8 years if an employee serves in a scale of pay for more than 18 years and is not promoted to a higher scale on account of lack of promotional opportunities or non-availability of a vacancy in the promotional scale, he would be granted two step-up(s) in his emoluments."

So far as the case of the present petitioners is concerned, it can be found that none of the petitioners can be punished for alleged non-availing of the promotions before the appointed date. Both the petitiones had completed 8/18 years on the appointed date. Therefore, even if the petitioners had not availed of the promotional avenues as alleged, their right to get

the proficiency step-up on their appointed date cannot be washed away. We, therefore, do not want to go into discussion of the question to the effect of not availing the promotional avenues in case 8 and 18 years service is not completed by any of the petitioners on the appointed date.

We are, therefore, of the opinion that the reasons for not granting the proficiency step-up to the petitioners are not justified. We, therefore, allow this writ petition and direct the respondents to grant proficiency step-up increments to the petitioners on the completion of 8 and 18 years of service. However, the arrears so calculated shall be restricted for a period of three years and two months prior to the filing of the writ petition which was filed on 03.05.1997."

A copy of the judgment was also handed over to Mr. G.C. Gupta, learned Deputy Advocate General, Punjab. After going through the same nothing much could be argued by the learned counsel in support of this appeal. I am also of the opinion that in view of the law laid down in the Division Bench judgment referred to herein above the view taken by the courts below granting proficiency step up to the plaintiff does not warrant any interference. No substantial question of law arises for determination in this regular second appeal. The same is accordingly dismissed.

October 27, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**